

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

LAURICE GILBERT,	:	
	:	Case No. 1:19-cv-2968
Petitioner,	:	
	:	
vs.	:	
	:	OPINION & ORDER
WARDEN NEIL TURNER,	:	[Resolving Doc. 6]
Respondent.	:	
	:	

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

On December 23, 2019, Laurice Gilbert petitioned for habeas corpus relief under 28 U.S.C. § 2254.¹ In response, Warden Neil Turner moved to transfer this case to the Sixth Circuit, arguing that Gilbert’s petition is a second or successive petition under 28 U.S.C. § 2244(b)(3).²

Because the Court agrees that Gilbert’s petition is a successive petition, the Court **TRANSFERS** this case to the Sixth Circuit.

I. Background

In 2007, an Ohio state jury convicted Petitioner Gilbert of two counts of aggravated murder and two counts of aggravated robbery, each with firearm specifications.³ The state trial court sentenced Gilbert to 33 years to life in prison.⁴ On direct appeal, a state appellate court reversed one aggravated robbery conviction and affirmed the other convictions.⁵ The Ohio Supreme Court affirmed.⁶

¹ Doc. 1.

² Doc. 6. Petitioner did not respond to Respondent’s motion to transfer.

³ *State v. Gilbert*, 2009-Ohio-463 ¶ 2 (Ohio Ct. App. Feb. 5, 2009).

⁴ *Id.*

⁵ *Id.* ¶ 90.

⁶ *State v. Gilbert*, 2009-Ohio-6543 ¶ 1 (Ohio 2009).

In 2011, Gilbert petitioned for habeas corpus relief for his 2007 conviction.⁷ This Court granted in part and denied in part Gilbert's petition.⁸ Thereafter, the Sixth Circuit affirmed the Court's partial denial of Gilbert's petition but reversed the partial grant.⁹

On December 23, 2019, Gilbert filed the instant habeas petition, his second habeas petition seeking relief from his 2007 conviction.¹⁰ This time, Gilbert asserts three grounds arising out of a state court's adjudication of his 2016 motion for a new trial.¹¹

On January 27, 2020, Respondent moved to transfer this case to the Sixth Circuit.¹² Gilbert did not file a response to the motion to transfer.

II. Discussion

Under 28 U.S.C. § 2244(b)(3), a prisoner seeking to file a second or successive habeas petition must first request an order from the court of appeals authorizing the district court to entertain the petition.¹³ If the prisoner files the successive petition in the district court without court of appeals authorization, the district court must transfer the motion to the court of appeals.¹⁴

Gilbert's instant petition is his second attempt to invalidate the 2007 judgment authorizing his confinement.¹⁵ Therefore, Gilbert's instant petition is a second or successive habeas petition under 28 U.S.C. § 2244(b)(3).

⁷ *Gilbert v. Tibbals*, No. 1:11-CV-558, 2013 WL 2456365 (N.D. Ohio June 5, 2013).

⁸ *Id.*

⁹ *Gilbert v. Tibbals*, 593 Fed. Appx. 494 (6th Cir. 2014).

¹⁰ Doc. 1.

¹¹ Doc. 1-2.

¹² Doc. 6. Petitioner did not respond to Respondent's motion to transfer.

¹³ A "second" or "successive" habeas corpus petition is one that "attempt[s] to invalidate the judgment authorizing the petitioner's confinement" and which the petitioner has already challenged in a federal habeas petition. *In re Caldwell*, 917 F.3d 891, 893 (6th Cir. 2019) (citing *Magwood v. Patterson*, 561 U.S. 320, 332-33 (2010)).

¹⁴ See *In re Sims*, 111 F.3d 45, 47 (6th Cir. 1997) (per curiam).

¹⁵ See *Gilbert*, 2013 WL 2456365.

Gilbert has not argued or presented evidence that the Sixth Circuit has authorized him to file a successive habeas petition.

III. Conclusion

For the reasons stated above, the Court **TRANSFERS** Gilbert's successive § 2254 habeas petition to the Sixth Circuit for consideration.

IT IS SO ORDERED.

Dated: March 16, 2020

s/ James S. Gwin
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE